

Official Form 417A (12/23)

*[Caption as in Form 416A, 416B, or 416D, as appropriate]*

## NOTICE OF APPEAL AND STATEMENT OF ELECTION

### **Part 1: Identify the appellant(s)**

1. Name(s) of appellant(s):  
\_\_\_\_\_MANHATTAN REALTY COMPANY 1, LP\_\_\_\_\_
2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

☐ Plaintiff

☐ Defendant

☐ Other (describe) \_\_\_\_\_

For appeals in a bankruptcy case and not in an adversary proceeding.

☐ Debtor

☒ Creditor

☐ Trustee

☐ Other (describe) \_\_\_\_\_

### **Part 2: Identify the subject of this appeal**

1. Describe the judgment—or the appealable order or decree—from which the appeal is taken:  
Order continuing automatic stay beyond 362(e) period  
\_\_\_\_\_
2. State the date on which the judgment—or the appealable order or decree—was entered:  
December 5, 2023  
\_\_\_\_\_

### **Part 3: Identify the other parties to the appeal**

List the names of all parties to the judgment—or the appealable order or decree—from which the appeal is taken and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. Party: 155 Chambersfood, Inc.  
Debtor Attorney: Law Offices of Alla Kachan P.C.  
2799 Coney Island Avenue, Suite 202  
Brooklyn, NY 11235  
718-513-3145
2. Party: U.S. Trustee Attorney: Office of the United States Trustee  
Eastern District of NY (Brooklyn)  
Alexander Hamilton Custom House  
One Bowling Green  
Room 510  
New York, NY 10004-1408  
(212) 206-2580

**Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)**

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

☒ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

**Part 5: Sign below**

  
\_\_\_\_\_  
Signature of attorney for appellant(s) (or appellant(s)  
if not represented by an attorney)

Date: 12.18.23

Name, address, and telephone number of attorney  
(or appellant(s) if not represented by an attorney):

Kucker, Marino, Winiarsky, & Bittens, LLP  
Attn: Robert Moore, Esq.  
747 Third Avenue, 12th Floor  
New York, New York 10017  
(212) 869-5030

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

**[Note to inmate filers:** If you are an inmate filer in an institution and you seek the timing benefit of Fed. R. Bankr. P. 8002(c)(1), complete Director's Form 4170 (Declaration of Inmate Filing) and file that declaration along with the Notice of Appeal.]

1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF NEW YORK

3 Case No. 23-42937-nhl

4 - - - - - x

5 In the Matter of:

6  
7 155 CHAMBERSFOOD INC.,

8  
9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 271-C Cadman Plaza East

13 Brooklyn, NY 11201

14  
15 December 5, 2023

16 2:57 PM

17  
18  
19  
20  
21 B E F O R E :

22 HON NANCY HERSHEY LORD

23 U.S. BANKRUPTCY JUDGE

24  
25 ECRO: UNKNOWN

1 HEARING re Status Conference.

2

3 HEARING re [35] Application to Employ filed by Debtor 155  
4 Chambersfood, Inc.) (Attachments: # 1 Exhibit Lease  
5 # 2 Exhibit Photograph # 3 Exhibit Executive Order  
6 # 4 Exhibit License # 5 Exhibit Correspondence) (Moore,  
7 Robert)

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25 Transcribed by: Rita Weltsch

1     A P P E A R A N C E S :

2

3     KUCKER MARINO WINIARSKY & BITTENS

4             Attorney for Manhattan Realty Company 1, LP

5             747 Third Avenue, 12th Floor

6             New York, NY 10017

7

8     BY:   ROBERT MOORE, JR.

9             CHRISTOPHER SCOTT MCCANN

10

11    LAW OFFICE OF ALLA KACHAN, PC

12             Attorneys for the Debtor

13             2799 Coney Island Avenue, Unit 202

14             Brooklyn, NY 11235

15

16    BY:   ALLA KACHAN

17

18    UNITED STATES DEPARTMENT OF JUSTICE

19             Attorneys for the U.S. Trustee

20             United States Federal Building

21             New York, NY 10014

22

23    BY:   REEM LATEEF

24

25

1 P R O C E E D I N G S

2 CLERK: The next matter, 155 Chambersfood Inc.

3 THE COURT: Appearances, please.

4 MS. LATEEF: Good afternoon, Your Honor, Reema  
5 Lateef on behalf of the Office of the United States Trustee,  
6 thank you.

7 MS. KACHAN: Good afternoon, Your Honor, Alla  
8 Kachan on behalf of the Debtor, 155 Chambers.

9 MR. MOORE: Good afternoon, Your Honor, Robert  
10 Moore on behalf of Manhattan Realty Company 1, landlord.

11 THE COURT: And Ms. Lateef, right?

12 MS. LATEEF: Yes, Your Honor. Good afternoon,  
13 Reema Lateef on behalf of the Office of the United States  
14 Trustee. Thank you.

15 THE COURT: Status firs -- I'm sorry, the Debtor  
16 filed an application to retain special counsel which is  
17 scheduled for presentment on December 12th. The Debtor also  
18 filed monthly operating reports for September and October.  
19 Okay.

20 So, there was a back and forth about this  
21 opposition to the motion to extend the time to assume or  
22 reject the lease, and the reason I'm raising it at status is  
23 the application has to do with -- well, there's a bunch of  
24 opposition, but one of the things that was raised was that  
25 the note -- that the rent has never been paid on time and

1       that they had not yet received the November rent.

2               But then Ms. Kachan filed a statement that said  
3       that the November rent was paid, but I guess it was with a  
4       check dated November 28th, I don't know if it was received.  
5       So, let me just see if that November rent, albeit late, was  
6       received.   Mr. Moore?

7               MR. MOORE:   Robert Moore, it was received  
8       yesterday December 4th, November rent.

9               THE COURT:   Got it.   Okay.   So, just so I'm clear  
10       about what we're doing here.   I don't have a claim yet from  
11       the landlord.   Bar order I think is in two days, so we  
12       wanted to know with respect to status with the debt if the  
13       landlord is intending to file a proof of claim?

14              MR. MOORE:   Yes, Your Honor, we will file it.  
15       Robert Moore, we will file it timely.   In addition, we have  
16       objections to motion or the application for appointment of  
17       special counsel which are due today.   It will be filed after  
18       this appearance.   As to what we're doing today I do think it  
19       remains outstanding landlord's motion to dismiss or in the  
20       alternative to lift the automatic stay.

21              THE COURT:   I know, you thinks it's -- you think  
22       it's terminated, and I'll say to you go figure that out,  
23       right?   You can take your chance if you'd like.   As an  
24       alternative to adjourning a motion to lift the stay that's  
25       contested, this is contested, correct?

1 MR. MOORE: Yes.

2 THE COURT: Okay.

3 MR. MOORE: Robert Moore here.

4 THE COURT: So, once it's -- once it's contested,  
5 let me see if I can explain this to you. Once it's  
6 contested, right, one would have a contested matter  
7 scheduling order entered and start discovery, okay. So,  
8 there's no -- it's not that it hasn't been heard, it's been  
9 contested, okay.

10 And I don't have to hear and determine a contested  
11 matter within that time period. If I did, I would just deny  
12 your motion because I couldn't do that. The point of a  
13 contested matter, particularly if there's discovery that's  
14 necessary, is that a contested -- you can get a contested  
15 matter scheduling order. That's what happens in a contested  
16 motion assuming -- let me go to it. I'm assuming it was  
17 contested.

18 So, it's not -- it doesn't work the way, you know,  
19 it's -- the way you say it works unless you think it does  
20 and then you can go and take a chance. I wouldn't do that,  
21 but that's me. Yeah, it was -- this is also contested, but  
22 the motion for relief, a motion to dismiss actually  
23 (indiscernible) or alternative relief. There would be --

24 MS. KACHAN: Your Honor, if it helps, my  
25 opposition was dated November 27th, (indiscernible) --



1 THE COURT: Okay. Yeah, it was contested --

2 MS. KACHAN: No, actually earlier. Sorry.

3 THE COURT: It was contested. So, okay, but I  
4 have a different question for Ms. Kachan.

5 MS. KACHAN: Yes, Your Honor.

6 THE COURT: It does not look to me -- it does not  
7 look to me from the operating reports that this lease, at  
8 this price point, is not particularly affordable based upon  
9 the amount of money that the Debtor is bringing in. So, you  
10 know, to tell me you're evaluating what to do, I don't think  
11 you're evaluating what to do, I -- if you don't have the  
12 money or you think that the litigation is going to give you  
13 leverage or give you money --

14 MS. KACHAN: Not just leverage, Your Honor. I --  
15 if I may, Your Honor, there's -- there is a lot more to  
16 this. I touched on it, but if we're going to talk about  
17 affordability --

18 THE COURT: Say your name, say your name.

19 MS. KACHAN: Alla Kachan. If we're going to talk  
20 about affordability, I already brought this up, Your Honor,  
21 previously, and hence the retention and hence, of course,  
22 they're opposing the retention. That's understood. But  
23 there is a reason for this situation, Your Honor.

24 The counsel that's going to be retained is going  
25 to address two things that directly affect the income of

1       this business. And whatever -- I'm not going to get into  
2       representations that were made at the time that they entered  
3       into this lease because I think that it's very unfair to say  
4       now well, they knew that there was the seating. Well, the  
5       landlord represented that he will remove it. So, what they  
6       knew and what the landlord represented is, you know, at best  
7       subject to an evidentiary hearing if we're going to go down  
8       that road.

9               But if we're going to go down the road of  
10       affordability, there is two things at least that need to be  
11       addressed and then we can actually make a decision if this  
12       business is not encumbered by something that literally  
13       blocks the front completely.

14              And in the summer months, the landlord does not  
15       bar the Debtor from fixing the air conditioning that does  
16       not allow a single person to sit inside because it's boiling  
17       over 100 degrees with the ovens on, and the air conditioning  
18       doesn't work, and the landlord makes a decision to say no,  
19       I'm not going to allow you to do any work, nor am I going to  
20       do any work.

21              So, between those two things at the very least,  
22       Your Honor, you know, if we have -- we are -- we cannot have  
23       any people inside in the summer because of landlord's  
24       actions. We cannot have people see the business from the  
25       outside because of the landlord's actions. And now, we're

1 going to say well it's not affordable. Well, they are  
2 paying the rent timely or untimely. Mr. Moore can argue  
3 with me as long as he wants.

4 THE COURT: But the Code -- the Code requires you  
5 to be timely.

6 MS. KACHAN: I understand, Your Honor. But they  
7 are paying post-petition rent. They paid it within November  
8 they paid -- they are going to pay the December rent very  
9 shortly. And they are retaining counsel because they're  
10 going -- it's not just about leverage, it's about damages,  
11 it's about redressing damages that they were already  
12 incurred that directly affect the income of this business.

13 So, to say that in a vacuum my client can't afford  
14 this lease, but the landlord can just carry on on his merry  
15 way and not do a single thing to redress their issues that  
16 they represented will be -- will be addressed at the -- at  
17 the inception of this lease, you're going to (indiscernible)  
18 --

19 MR. MOORE: Your Honor, may I be heard? Robert  
20 Moore speaking.

21 MS. KACHAN: So, at this point, Your Honor, I  
22 would very much appreciate if I wasn't interrupted. At this  
23 point and time, I don't think that we are at a juncture  
24 where with respect to Mr. Moore's argument in my -- in  
25 response to my motion to extend time. Mr. Moore's argument

1 is the state terminated, I think, Your Honor addressed quite  
2 eloquently.

3 With respect to Mr. Moore's other motion, Your  
4 Honor, we have a possessory interest, we have a lease to  
5 assume, I think that's been determined. We are paying post-  
6 petition; we are pursuing all the claims, or going to be  
7 pursuing all the claims available under the law to redress  
8 all of the issues that the landlord has created that have  
9 affected business income.

10 We intend to do that, and we intend to do that as  
11 much as needs to be done. And that's what this attorney is  
12 going to be retained for. And I think, Your Honor, at this  
13 --

14 THE COURT: What --

15 MR. MOORE: Your Honor, may I speak?

16 THE COURT: No, I have questions for Ms. Kachan,  
17 and I may ask of you if she doesn't know the answer.

18 I thought I had read -- I thought I had read  
19 something about it, but I don't remember. I may have just  
20 seen a headline. Is the city now taking a position with  
21 these things coming down? Do you know?

22 MS. KACHAN: Your Honor, I think they had to be  
23 removed a while back.

24 THE COURT: Okay.

25 MS. KACHAN: As far as I know, they had to be

1 removed a while back and that's one of the things that this  
2 attorney will address. And I will disagree here vehemently  
3 with Mr. Moore's position that oh, this is your problem with  
4 the city. No, it's not, it required the landlord's consent.  
5 I know for a fact because I represented a number of Brooklyn  
6 restaurants that had the same issue.

7 And there is not a chance that the landlord's  
8 consent wasn't required. I know for a fact that it was  
9 because my clients, respective clients' consent was  
10 required. And now, they do have to remove it and that's one  
11 of the things that this attorney will address, both with the  
12 landlord and the city. But yes, they do have to remove it.

13 MR. MOORE: Your Honor, Robert Moore speaking.  
14 Your Honor, Robert Moore speaking. May I address this five-  
15 minute speech by Ms. Kachan.

16 THE COURT: No, you can your -- you can even have  
17 10 when it's your turn.

18 Go ahead, finish, Ms. Kachan.

19 MS. KACHAN: Your Honor, so to answer Your Honor's  
20 question as far as I understand the law as to this, the  
21 regulation, the current city regulation, and position as to  
22 this, I think that, again, that's just my understanding of  
23 it. That as long as the business owner and the landlord are  
24 in agreement, I believe that they can keep it today.

25 If the -- if the business owner doesn't want it

1       there they certainly are not -- not bound by having it  
2       there. The fact that this is a neighbor's, not even theirs,  
3       that this was placed on their property, and it blocked their  
4       entrance and their visibility, that's just above and beyond.  
5       And the representation was made, upon information and  
6       belief, to my client at the time that the lease was entered  
7       into.

8               If Mr. Moore wants to spend legal fees litigating  
9       this on a contested matter scheduling order with evidence  
10      shown, we have absolutely no problem with that. Meanwhile,  
11      we're going to retain counsel, pursue these claims in state  
12      court, and the chips will fall where they fall. Meanwhile,  
13      Your Honor, this Debtor is doing what he's supposed to be  
14      doing.

15             Yes, he's running a little late and I'm  
16      encouraging him to make sure that that lateness is, you  
17      know, decreased and it's caught up. But he's paying, he  
18      paid November, he paid October, he's going to pay December  
19      very shortly. He is doing everything else he's supposed to  
20      do. He's filing timely monthly operating reports, he's  
21      paying quarterly fees, he is working on the state court  
22      claims.

23             As far as debtors go in this Court Your Honor, as  
24      Your Honor knows, he is in very good shape. And that's --  
25      and that's where we are. And to say that he's, you know,

1       that it's not affordable, well, Your Honor, he also  
2       bargained for a different type of occupancy. He also did  
3       not bargain to have all of these issues to deal with  
4       alongside with his full rent. But he's doing his best to  
5       address both.

6               So, my position's very simple. We're in this  
7       Chapter 11, we have not caused an issue, we haven't incurred  
8       a problem, he hasn't violated anything. The stay is very  
9       much in effect, the lease is very much in effect,  
10       notwithstanding anything Mr. Moore will -- can, you know,  
11       say, or do. The post-petition rent is being paid. I think  
12       that we need to stay here and see this through.

13              MR. MOORE: Your Honor, may I speak now?

14              MS. KACHAN: And if at one point he stops -- and  
15       if one point -- if at one point, he stops paying post-  
16       petition rent then we'll revisit this issue. But we're not  
17       there.

18              THE COURT: Yeah, I'm just looking at -- I'm just  
19       looking at (indiscernible). I'm not seeing that. I'm  
20       seeing that they're no longer accepting new applications  
21       under the temporary program, the permanent program is in  
22       development with timeline application details to be shared  
23       as they become available. Anyway, there's a lot in here  
24       under the New York City DOT website.

25              Go ahead, Mr. Moore. What did you want to tell

1 me?

2 MR. MOORE: Thank you, Your Honor, Robert Moore.  
3 So, a variety of things. First off, it is a false  
4 representation of fact that landlord said anything regarding  
5 this outdoor seating which is in the street at the time the  
6 lease was signed. As counsel should know there is --

7 THE COURT: I don't take -- I'm not taking  
8 evidence here. (indiscernible) --

9 MR. MOORE: I know, I'm creating -- thank you,  
10 Your Honor, I'm just creating a record. She got to say  
11 whatever she wanted, now I can respond.

12 THE COURT: Yes.

13 MR. MOORE: So, there's also what's called a  
14 merger clause in the lease and that says to the extent they  
15 claim there were any other promises or representations made  
16 at the time, they are subsumed within the lease. Therefore,  
17 if they are not stated in the lease, they are of no effect.

18 Debtor has never paid rent once on time. Not  
19 once. This is precisely why we had to go to LNT 552 in New  
20 York. So, what happened there is that Debtor signed a  
21 stipulation of settlement where they had to pay X amount in  
22 the arrearage, and they had to pay ongoing as of the first  
23 of every month.

24 Debtor even breached that obligation. And that  
25 resulted in a judgment of possession and warrant of eviction



1 and a monetary judgment in the amount of \$84,000 plus nine  
2 percent interest, which continues to accrue. Even after  
3 that, right before we were supposed to execute on the  
4 warrant, Debtor filed his petition.

5 So, as of right now, we're looking at \$127,000 and  
6 change just in pre-petition arrears. Not once has Debtor  
7 paid post-petition rent on time. Shortly must mean  
8 something for some people that's different than everybody  
9 else because November was tendered on December 4th. Under  
10 no reasonable understanding of the word shortly or timely  
11 does that make sense. A month late is not timely.

12 Now, as to the allegation regarding the air  
13 conditioner, Debtor didn't pay rent in December, or November  
14 of 2022, or January, February, when the air conditioner  
15 wouldn't even be an issue. So, that's not any proximate  
16 cause here at all. Plus, landlord arranged with Debtor --

17 THE COURT: I don't think -- I didn't -- I didn't  
18 get that with connecting argument. She's just saying with  
19 respect to the fact they've had trouble in this business is  
20 that in summer months the business was also off in addition  
21 to what she is saying is the -- the area that blocked  
22 visibility that the air conditioner was broken. I didn't  
23 get the connection between rent being paid and the air  
24 conditioning being broken.

25 MR. MOORE: Okay. So, if Your Honor would look at

1 the Docket 30, this is Exhibit N, you'll see the photograph  
2 of this alleged obstruction.

3 THE COURT: Correct.

4 MR. MOORE: It's not an obstruction at all. It's  
5 in the street, you can clearly see the pizza restaurant  
6 across the street. You can see it on the same side of the  
7 street. This is not a visibility issue. Landlord's consent  
8 was not required, is not required, and by the way, that  
9 seating has been taken down, it's been taken down.

10 THE COURT: Okay. When did it get taken down?

11 MR. MOORE: Within the last couple of weeks.

12 THE COURT: Okay.

13 MR. MOORE: So, and more fundamentally, Your  
14 Honor, and you'll see this in our opposition to the  
15 appointment of -- application to appoint special counsel,  
16 there's binding Appellate Division (indiscernible) binding  
17 case law, binding, which says that a tenant who failed to  
18 pay rent cannot recover under breach of contract theory,  
19 breach of lease theory at all. It can't because they have  
20 not performed.

21 So, you will see this binding case law and  
22 respectfully Your Honor your gut was right, they cannot  
23 afford this rent, they've never been able to afford this  
24 rent. It's just going to increase. We have 124-plus in  
25 arrears that we're never going to see, there's no

1       protections here, we're lucky if we see the rent ever, much  
2       less a month after it's due.

3               THE COURT:   Was there a -- with respect to taking  
4       the seating down, was the whole fabrication taken down?

5               MR. MOORE:   It's gone, all of it.

6               THE COURT:   All right.   So, there's a good --  
7       there's a very good test then.   And that is if we're -- this  
8       is a restaurant, right?

9               MR. MOORE:   It's a little pizza shop.

10              THE COURT:   All right, it's a pizza --

11              MS. KACHAN:   It's a pizzeria, Your Honor.

12              THE COURT:   A pizzeria.   Well, if the pizzeria --

13              MS. KACHAN:   With food other than the pizza.

14       There's other food there.

15              THE COURT:   Okay.   If the pizza -- during holiday  
16       season when presumably these kinds of places are supposed to  
17       do their best generally, it seems to me that if that's down  
18       and she doesn't need air conditioning, they don't need air  
19       conditioning today in the middle of this weather, that we'll  
20       be able to see in very short order whether or not business  
21       picks up and there's enough money here, because right now  
22       there isn't.

23              And on a -- on a going concern basis it doesn't  
24       look like this restaurant is bringing in enough money to  
25       cover -- to cover much more than rent, right.   I mean, let's

1 take a look at -- let me look at my notes here, but I had  
2 notes on this and how much was in the (indiscernible). I  
3 mean, you have to sell a lot pizza and other food. Again,  
4 let me get the numbers. I know I have them because I read  
5 them.

6 MS. LATEEF: Judge, Do you want the numbers from  
7 the latest operating report?

8 THE COURT: No, I found them, I found them. Yeah,  
9 there here. Okay, the monthly operating report for October  
10 shows total net income of \$2,141.44, and cash on hand is  
11 \$17,645.83 before the payment of \$17,250, which was made by  
12 check dated November 28th.

13 So, again, and if the thing was taken down a  
14 couple of weeks ago, that would have been for the November  
15 period, but we'll see what December brings. But I'm not  
16 going to extend it, I'm going to extend it a little bit at a  
17 time.

18 MR. MOORE: Your Honor, Robert Moore speaking.

19 THE COURT: You're getting, Mr. Moore, you're  
20 getting -- you know what, you do a lot better than a lot of  
21 other landlords before me. You're getting paid.

22 MR. MOORE: But Your Honor, Robert Moore speaking.

23 THE COURT: But I want to -- I want to ask Ms.  
24 Kachan if there's a check dated, unless you're talking about  
25 just you don't have the money in the bank. But if there's a

1 check dated November 28th, why does it take until December  
2 4th for the landlord to have it in hand? If you know that  
3 this is a --

4 MS. KACHAN: Oh, I don't know, Your Honor, we --

5 THE COURT: If you know that this is a problem and  
6 you know it's late, I mean, if I were late again unless I  
7 didn't have the money in the bank. But if I were late, I  
8 would be making sure that as soon as I had that money in the  
9 bank and I had a check written that I would figure out a way  
10 to get that check in that landlord's hand. I mean --

11 MS. KACHAN: Your Honor, Your Honor, I'll tell you  
12 this. This is Alla Kachan. We, as with other cases, when I  
13 think that there may be any issue with delivery, or timing,  
14 or whatnot we have them bring it to my office and we mail  
15 it, we -- by priority mail. I can check and I don't know  
16 when Mr. Moore's client got in hand, I'm not going to say  
17 that it's true or untrue. But I know that that check was  
18 made, and it left my office. How long it took to get to  
19 him, whether the holiday period interfered, I do not know.  
20 Whether they really got it on the 4th, I also don't know.  
21 But I didn't mail it on the 4th, I can tell you that.  
22 Because I mailed it, not my client.

23 MR. MOORE: Your Honor, I think USPS, I think we  
24 checked this last time and what happened was it wasn't even  
25 sent out until after the appearance when Ms. Kachan --

1 THE COURT: Yeah.

2 MR. MOORE: -- had already been --

3 THE COURT: You're using a service. Ms. Kachan,  
4 you're using a service. I mean, I went back -- I was under  
5 the impression last time that it was very different. You're  
6 using a service, and that service is causing -- seems to me  
7 because you use a service in your office to pick up, right?

8 MS. KACHAN: (indiscernible).

9 THE COURT: You don't have somebody going down  
10 into the post office and putting it in a priority label and  
11 mailing it from the post office on the day of the 28th?

12 MS. KACHAN: It's not a service, Your Honor, I can  
13 check what time it went out and Mr. -- whatever Mr. Moore  
14 just said is --

15 THE COURT: So, I -- you don't use a service to --

16 MS. KACHAN: Obscenely untrue, but I'm not even  
17 going to go into that.

18 THE COURT: (indiscernible). Well, there was a  
19 delay last time, was there -- is there a person in your  
20 office who takes the mail the day it's ready, priority or  
21 however, and goes into a post -- United States Postal Office  
22 and mails it?

23 MS. KACHAN: Yes, Your Honor.

24 THE COURT: (indiscernible). There is?

25 MS. KACHAN: For the most part. They put it in a

1 -- they just told me that they put it into the box by the  
2 post office, but there's nobody who comes to us and picks it  
3 up, no.

4 THE COURT: Well, what box do they put it in?

5 MS. KACHAN: The USPS box outside of the post  
6 office.

7 THE COURT: Well, is that regular mail or priority  
8 mail?

9 MS. KACHAN: It may be -- no, no, it is priority  
10 mail, it's USPS not -- I can show Your Honor the link.

11 THE COURT: USPS is the United States Postal  
12 Service.

13 MS. KACHAN: Yeah, and there is priority,  
14 priority.

15 THE COURT: Does it go into a priority envelope?

16 MS. KACHAN: Yes.

17 THE COURT: Okay. You pay extra for that, Ms.  
18 Kachan?

19 MS. KACHAN: Yes, I'm pretty sure. I have to  
20 check.

21 THE COURT: You're guessing.

22 MS. KACHAN: Can you show me that -- Your Honor,  
23 I'll check it. Your Honor, I can also have the client  
24 deliver it, but unfortunately I don't think that that's  
25 going to help because they're going to do everything

1 possible to say that he didn't, so that's why --

2 MR. MOORE: Your Honor, Robert Moore speaking.

3 MS. KACHAN: -- I was sending it.

4 MR. MOORE: All we want is the rent, you know,  
5 these games happen every time, Judge. Excuse me, every time  
6 Your Honor --

7 MS. KACHAN: Your Honor knows me well enough that  
8 I don't play games.

9 MR. MOORE: Your Honor, she --

10 MS. KACHAN: I don't -- I don't play games, Your  
11 Honor, I've been doing this for 22 years that I've been in  
12 front of Your Honor.

13 MR. MOORE: Would you please tell her not to  
14 interrupt me? Would you please tell Ms. Kachan not to  
15 interrupt me?

16 MS. KACHAN: (indiscernible) for 22 years and we  
17 don't play games. Mr. Moore you're --

18 MR. MOORE: You're playing incredible games. Your  
19 Honor, will you please tell her not to interrupt me as you  
20 advised me for her?

21 MS. KACHAN: (indiscernible).

22 THE COURT: It's hard to know who interrupted who  
23 or who said what for the last four minutes because nobody  
24 identified themselves and you were talking at the same time.  
25 Go ahead.



1 MS. KACHAN: Your Honor, so I'm looking at --

2 MR. MOORE: Oh, well, here it is, Judge. Can you  
3 see it? Can you see it, Your Honor?

4 THE COURT: I can see it.

5 MS. KACHAN: -- it was 11/28.

6 THE COURT: And what does it say?

7 MR. MOORE: Priority overnight for December -- for  
8 December --

9 MS. KACHAN: Ship date 11/28.

10 MR. MOORE: For December.

11 MS. KACHAN: Ship date is 11/28.

12 MR. MOORE: For December, wow, look at that,  
13 Judge.

14 MS. KACHAN: Ship date 11/28.

15 MR. MOORE: (indiscernible), the proof is in the  
16 pudding. That's --

17 THE COURT: Ms. Kachan, stop. Ms. Kachan, stop.

18 MR. MOORE: Whatever she's saying, this is what it  
19 says. Monday, December 4th, priority overnight. That's  
20 what it has.

21 THE COURT: Mm hmm.

22 MS. KACHAN: Except that my label --

23 THE COURT: Wait a minute.

24 MS. KACHAN: -- says ship date 11/28, expected  
25 delivery 11/30, and that's when it left my office --

1 MR. MOORE: Actually, Your Honor, I'm sorry, that  
2 was a different -- that was a different envelope, excuse me.

3 MS. KACHAN: Oh. But shockingly mine says that  
4 the expected delivery was 11/30.

5 MR. MOORE: Okay. I'm sorry, Your Honor, that was  
6 different. Here it is, here it is. And here you see, here  
7 you see she using something called Click and Ship. Click  
8 and Ship.

9 THE COURT: (indiscernible).

10 MR. MOORE: Every time something is received in my  
11 office you stamp it as soon as you get it.

12 THE COURT: Right.

13 MR. MOORE: All right. It was received --

14 THE COURT: So, don't -- this is easy. I am  
15 ordering you not to use Click and Ship. I know you're using  
16 a program or something, I don't where you're dropping it. I  
17 am ordering that if you are going to do it or your client's  
18 going to do it, you go into a post office and you physically  
19 hand it to them and you send it by overnight mail. So,  
20 ordered.

21 MS. KACHAN: No problem, ma'am.

22 THE COURT: Because this is nonsense. You want to  
23 stay in the property, you want to pay rent, overnight mail.

24 MS. KACHAN: No problem, ma'am.

25 THE COURT: Physically in a post office. I

1 remembered the Click and Ship, I knew you were using a  
2 service, that's a service, that's not the postal service,  
3 Click and Ship, as far as I know. Not the last time I was  
4 in a post office, and I go very frequently.

5 I can do two things. I can send you to mediation.

6 MR. MOORE: No, Your Honor, Robert Moore speaking.

7 THE COURT: Oh, I can send you to mediation, Mr.  
8 Moore.

9 MR. MOORE: Please, no.

10 THE COURT: You understand I can send you to  
11 mediation?

12 MR. MOORE: I know you can, I know you can.

13 THE COURT: Just so you know.

14 MR. MOORE: I know you can, Judge, Robert Moore  
15 speaking.

16 THE COURT: It sounds like it's a fate worse than  
17 death. Okay, I'm going to -- I'm going to extend you 30  
18 days, not all those days you asked for. I'm going to have  
19 to have -- well, I can't extend you 30 days, I can extend  
20 you -- let's see when are you back. Do we have them back  
21 for anything, probably not.

22 CLERK: Judge, if an objection was going to be  
23 filed, it'll be the 10th and there'll have to be a hearing  
24 scheduled on that. I don't know if they want  
25 (indiscernible) before it.

1 THE COURT: Oh, okay. Yeah, that's true. Okay.  
2 So, when is the time up right now? It was up, you're trying  
3 to make the motion beforehand.

4 MS. KACHAN: I think December 16th.

5 MR. MOORE: It's already up.

6 MS. KACHAN: I believe --

7 THE COURT: When is it up?

8 MS. WEISS: I believe the brief deadline, 120th --  
9 the 20th day is December 14th.

10 THE COURT: Okay. You also know that she only  
11 gets the one extension on motion, and then after that since  
12 the Code has changed, you have to consent to each and every  
13 one of them. So, if you don't consent after that and she  
14 hasn't done what she has to do to assume or reject then  
15 we're done. I mean, I guess -- I think maybe -- no, I think  
16 the Code requires consent. Ms. Weiss?

17 MS. WEISS: Second extension, Your Honor, yes.

18 THE COURT: The second?

19 MS. KACHAN: Yeah, anything after the --

20 THE COURT: Yeah, but I -- it can't even be over  
21 the -- I mean, I can't -- I cannot approve it over  
22 opposition, they have to actually consent.

23 MS. KACHAN: Your Honor, but, Your Honor, but may  
24 I interject for one second? It's the second extension  
25 beyond the 90 days. So, if we're being extended by 30 then

1 --

2 THE COURT: Oh, no, no, I agree, I agree, I agree.

3 No, no, I meant --

4 MS. KACHAN: We need the consent only after the 90  
5 days.

6 THE COURT: Yeah (indiscernible). Yes,  
7 (indiscernible).

8 MR. MOORE: Your Honor, Robert, Your Honor, Robert  
9 Moore. If you are extending for the 30 days, I would ask  
10 that that extension be contingent upon payment of December  
11 rent immediately.

12 THE COURT: Well, they'll have to pay December  
13 rent.

14 MR. MOORE: I know, but the --

15 THE COURT: January -- all right, let's find room  
16 also on January 16th for this. I'll extend it until the  
17 19th of January.

18 MR. MOORE: Your Honor, Robert Moore, --

19 CLERK: 3:00, Judge.

20 MR. MOORE: -- can you make that again contingent  
21 upon December, payment of December and January rent.

22 THE COURT: No, in -- I'm not making any decisions  
23 on anything in this case. I just have to hear it myself.

24 January 19th --

25 CLERK: 16th.

1 THE COURT: -- at what time?

2 CLERK: 16th, Judge, at 3:00.

3 THE COURT: 16th, January 16th not the 19th,  
4 January 16th and I gave the extension until the 19th. The  
5 extension's until the 19th until the end of that week.  
6 January 19th is when we're adjourning this to at what time?

7 CLERK: January 16th at 3:00.

8 THE COURT: January 16th, January 16th, January  
9 16th at 3:00. The extension is until January 19th carrying  
10 everything else.

11 MR. MOORE: Your Honor --

12 CLERK: Judge, the notice of presentment for the  
13 retention is not --

14 THE COURT: If it's objected to, if it's objected  
15 to and if the Debtor in possession is a business judgment  
16 rule, Mr. Moore, and if you're the other side of that it's  
17 not -- I mean, I don't know how strong of an objection  
18 you're going to be able to make here, but you can make  
19 whatever objection you make. If you make an objection it  
20 will also be on that day at that time.

21 And if you're filing your claim by the 7th, you  
22 could also if you want to make object to the claim, and  
23 we'll pull everything together in the contested matter with  
24 discovery if you haven't resolved it yet by the -- on the  
25 16th.

1 MR. MOORE: Your Honor, Robert Moore --

2 MS. KACHAN: And we will definitely object, Your  
3 Honor, to their claim.

4 MR. MOORE: Your Honor, Robert Moore. Just so I'm  
5 clear, the time with in which to assume or reject is  
6 extended to January 16th?

7 THE COURT: January 19th.

8 MR. MOORE: Okay. And so, January --

9 THE COURT: The adjournment is January 16th at  
10 3:00.

11 MR. MOORE: So, Your Honor, I have a federal trial  
12 on January 16th.

13 THE COURT: Oh.

14 MR. MOORE: It's going to last all day.

15 THE COURT: Okay.

16 MR. MOORE: In SDNY.

17 THE COURT: Okay, hold on.

18 CLERK: The 23rd, Judge.

19 THE COURT: Then I have to extend it to -- extend  
20 it to the 20 -- okay, the 23rd, I have to extend it to the  
21 26th.

22 CLERK: At 3:00.

23 THE COURT: So, redo, redo, rewind. January 26th  
24 is the day I'm extending it to. And again, this goes  
25 against your 90 day, okay. So, we'll count the days.

1 January 26th, the motion to assume or reject is extended  
2 until that date subject to my further extending it if you  
3 pay your rent on time. And the third -- and then the 23rd  
4 at 3:00?

5 CLERK: Yes.

6 THE COURT: Which is actually better because I  
7 have a much lighter calendar on that day anyway. January  
8 23rd.

9 MS. KACHAN: Your Honor, just for clarity. You  
10 said if you pay rent, so I'm not contingent as Mr. Moore had  
11 requested, right?

12 THE COURT: Right, I did not make it contingent,  
13 but he's got to -- he's got to pay the rent.

14 MS. KACHAN: Understood.

15 THE COURT: And I don't want the rent paid in the  
16 following month for the month it's due.

17 MS. KACHAN: Understood.

18 MR. MOORE: Your Honor, Robert Moore. And just so  
19 I understand, and the record is clear, is the Court denying  
20 the motion to lift the stay?

21 THE COURT: Do you want me to?

22 MR. MOORE: I would like an order.

23 THE COURT: No.

24 MS. KACHAN: I (indiscernible), Your Honor.

25 THE COURT: No, I will give you a contested matter



1 scheduling order, issued as joint, I will give you a  
2 contested matter scheduling order and we'll start discovery.  
3 This is not a question of anything terminating. We have an  
4 answer and that creates a contested matter. And then the  
5 contested matter and discovery is subject to the Court's  
6 schedule. So, I'll do a contested matter scheduling order,  
7 they'll be a Rule 26 exchanges. How much discovery do you  
8 want?

9 MR. MOORE: Very little.

10 THE COURT: Okay, how much do you want Ms. Kachan?

11 MS. KACHAN: At least 30 days.

12 MR. MOORE: No.

13 THE COURT: 30 days, 30 days discovery?

14 MS. KACHAN: Yes, Your Honor.

15 THE COURT: That's all you want, okay.

16 MS. KACHAN: I said a piece. We can do 60.

17 MR. MOORE: No, 30 days is more than sufficient in  
18 this simple, simple case.

19 THE COURT: Well, again --

20 MS. KACHAN: I'll ask for 60, Your Honor.

21 THE COURT: I don't -- I don't know how she goes  
22 30 days discovery, but maybe I'm missing something here.

23 MS. KACHAN: I'll ask for 60.

24 MR. MOORE: Judge, she's just making this up.

25 THE COURT: No, I normally -- I normally don't --

1 I've never done 30 days discovery, it's silly, it just means  
2 I'll have to go back and do it again. I will put in -- I  
3 will put in a contested matter scheduling order. Once the  
4 objection to claim comes in, it'll be -- it'll be within  
5 that, we'll add it to it. And so, all your fights will be  
6 under a contested, including the motion to dismiss, will be  
7 under a contested matter scheduling order.

8 And again, I'll do Rule 26 exchanges, you will see  
9 it on the docket, and I will enter it, okay? So, that's the  
10 answer to your question. Your question is, is that we have  
11 a contested matter scheduling order, okay. All right.

12 Let me just see what else. Ms. Lateef, did we go  
13 over whatever we need to go over?

14 MS. LATEEF: Your Honor, Reema Lateef. I don't  
15 believe so, but it's just brief on status, Your Honor. The  
16 Debtor is current with operating reports and quarterly fees,  
17 so nothing else to report. Thank you, Your Honor.

18 And Your Honor, just lastly with respect -- Reema  
19 Lateef -- with the retention application. We did upload the  
20 orders for retention of counsel and the accountant, and we  
21 are working with counsel to resolve concerns with respect to  
22 the special counsel retention application.

23 THE COURT: (indiscernible) hearing if it gets  
24 objected to by Mr. Moore.

25 MR. MOORE: Thank you, Your Honor, Robert Moore.

1 THE COURT: Okay. All right, thank you.

2 MS. KACHAN: Thank you, Your Honor.

3 MS. LATEEF: Thank you, Your Honor.

4 (Whereupon these proceedings were concluded at

5 3:34 PM)

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I N D E X

RULINGS

Page Line

Debtor's counsel is ordered to no longer  
use a shipping company for mailing rent to  
landlord's counsel. Must go to the post  
office and physically have it sent  
overnight

24 17

Motion to assume or reject extended to  
January 26th if rent paid on time, and  
next hearing will be January 23rd, 2024  
at 3:00 P.M.

29 23

C E R T I F I C A T I O N

I, Rita Weltsch, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Rita Weltsch

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: December 13, 2023

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